

VIRGINIA CODE COMMISSION

Monday, July 18, 2011 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards, Bill Janis, Jim LeMunyon; Ryan McDougle;
Charles S. Sharp; Robert L. Calhoun; Thomas M. Moncure, Jr.; Robert L. Tavenner;
Jeffrey S. Palmore

MEMBERS ABSENT: Frank Ferguson; Wesley G. Russell, Jr.; E.M. Miller, Jr.;
Patricia West

OTHERS PRESENT: Brian Kennedy, LexisNexis; Jeannine Rose, Department of
Planning and Budget

STAFF PRESENT: Lisa Wallmeyer, David Cotter, Jane Chaffin, Lilli Hausenfluck,
Karen Perrine

Call to order; minutes

Senator Edwards called the meeting to order at 10:10 a.m. The Chairman recognized and welcomed two new members--Robert L. Tavenner, who is the new Director of the Division of Legislative Services, and Jeffrey S. Palmore, who was designated by the Governor. Mr. Palmore explained that either he or Jasen E. Eige will attend meetings of the Code Commission as the Governor's designee.

The minutes of the June 7, 2011, meeting were presented. Upon a motion made by Delegate Janis and seconded by Judge Sharp, the Commission approved the minutes.

Foreword to the Code of Virginia

Mr. Moncure presented the final draft of the Foreword to the Code of Virginia, which will be printed in Volume 1 and distributed in September. A question arose as to how to list the Governor's designee in the membership list since two individuals have been designated to serve in this role. The Commission decided to list both names. Delegate Janis made a motion, seconded by Mr. Moncure, to amend the membership listing to include both individuals designated by the Governor and to approve the Foreword with these changes. The motion carried.

Bill Draft to Expand Code Provisions Requiring Notice by U.S. Mail to include Commercial Delivery Services and Email

Lisa Wallmeyer spoke to the Commission about its request for legislation to expand mail delivery options when Code provisions require that delivery or written notice be given by U.S. postal mail. The two issues concern expanding the delivery options to include providing notice through email and commercial delivery services, such as Federal Express and UPS.

The proposed bill draft creates a statutory rule of construction that allows any written notice required by the Code of Virginia to be provided by any commercial delivery service or sent via email or other electronic means, regardless of method of delivery set

1 forth in the statute. Electronic delivery of the notice may only be used with the consent of
2 the recipient of the notice.

3 Email

4 Ms. Wallmeyer explained that Virginia adopted the Uniform Electronic Transactions Act
5 (UETA) (§ 59.1-479 et seq. of the Code of Virginia). UETA provides that, where both
6 parties agree, electronic means is acceptable for serving notice, unless a specific method
7 of delivery is set forth. When the Code specifies a particular method of delivery, the
8 specified limitations must be followed. As an example, Ms. Wallmeyer stated that over
9 500 references requiring notice be given by certified mail appear in the Code. UETA
10 does not override these provisions. In addition, Ms. Wallmeyer pointed out that certain
11 important transactions, such as insurance cancellations, require hard copy form.

12 Based on its discussion, the Commission decided not to pursue the notice by email
13 option.

14 Commercial Delivery Services

15 To address commercial delivery services, Ms. Wallmeyer said an option is to add the
16 alternative of using commercial delivery services for providing notice in § 1-206 instead
17 of setting out the provisions in a new section. On a related note, Ms. Wallmeyer
18 mentioned that Chapter 566 of the 2011 Acts of Assembly amended § 1-206 to provide
19 that whenever a state agency sends any mail or notice by certified mail, return receipt
20 requested, then any additional mail or notice that is sent by such state agency pertaining
21 to the same subject matter and purpose may be sent by regular mail.

22 The Commission discussed whether commercial delivery is the qualitative equivalent of
23 registered or certified mail. Although such change would be considered substantive, the
24 Commission agreed that current code provisions are outdated. A member commented
25 that, as a matter of common practice, if a person used Federal Express as a method to
26 ensure delivery, that person likely would be surprised and distressed to discover that this
27 delivery method was insufficient for complying with the law.

28 Ms. Wallmeyer suggested adding a second rule as subsection B of § 1-206 providing that
29 any notice required to be sent by U.S. mail (regular, certified, or registered) may,
30 alternatively, be sent by a commercial delivery service that is registered with the State
31 Corporation Commission.

32 Senator Calhoun questioned why § 1-206 applies only to state agencies. Additionally, he
33 asked staff to talk to the Virginia Municipal League and the Virginia Association of
34 Counties about the issue.

35 Delegate LeMunyon stated that the real issue is whether a person is given fair notice and
36 suggested adding language to ensure that there is a record of delivery for the initial
37 delivery.

38 Staff will redraft the language and present it at the next meeting.

Recodification of Title 64.1 of the Code of Virginia

David Cotter reported that after today's review of Subtitle IV, he will begin presenting Subtitle III at the next meeting. The original plan for Subtitle III included moving the Health Care Decisions Act (Act) from Title 54.1 (Health Professions) into Title 64.2. Certain interested parties have raised objections to moving the provisions from Title 54.1 to Title 64.2. Although the interested parties agree that the Act is misplaced in Title 54.1, there is disagreement about where the provisions should be placed in the Code. The Code Commission agreed to exclude the Act from Title 64.2, but it will consider moving it to another title, as appropriate, and welcomes input from the interested parties as to proper placement.

Mr. Cotter presented proposed Subtitle IV, Provisions Applicable to Probate and Nonprobate Transfers, and stated that the majority of the changes in this subtitle are technical in nature. Subtitle IV consists of Chapters 23 (Uniform Simultaneous Death Act), 24 (Persons Presumed Dead), 25 (Conservators of Property of Absentees), 26 (Acts Barring Property Rights), 27 (Uniform Disclaimer of Property Interests Act), and 28 (Release of Powers of Appointment).

The Commission discussed language in subsection C of § 64.2-2404 (lines 251-254) regarding where to publish a notice that a petition has been filed seeking judicial determination that a person is dead. Mr. Palmore made a motion, seconded by Senator Calhoun, to insert the word "published" on line 251 after "newspaper" for clarification. The motion was approved.

After completing the review of Subtitle IV, Mr. Cotter stated that he would begin presenting Subtitle III, Fiduciaries and Guardians, at the September meeting. Also, a General Provisions chapter is under development and will be presented at a future meeting.

Other Business; Public Comment; Adjourn

The Commission considered whether a two-day meeting should be scheduled in order to complete consideration of Title 64.2 and decided to wait until the September 7 meeting to decide if an extra meeting day will be necessary. Senator Calhoun stated that he has a conflict on the morning of September 7 and asked if anyone objected to changing the meeting time to begin at 12 noon instead of 10 a.m. The Commission agreed to the change in meeting time.

Delegate LeMunyon reminded the Commission that it has not yet made a decision on which title to recodify next year. He indicated that Titles 33.1 and 15.2 had been brought to his attention as potential candidates. Mr. Tavenner will discuss the issue with the appropriate staff, and Ms. Chaffin will place this item on the September meeting agenda.

The Chair opened the floor for public comment. As there was no public comment and no further business to be discussed, the meeting adjourned at 11:55 a.m.